



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

MARLON I. BROWN, DPA  
DIRECTOR

[REDACTED], MI

Date Mailed: October 18, 2024  
MOAHR Docket No.: 24-010411  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Caralyce M. Lassner**

### **HEARING DECISION**

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 42 CFR 438.400 to 438.424; 45 CFR 99.1 to 99.33; and 45 CFR 205.10; and Mich Admin Code, R 792.11002. After due notice, a hearing was held by telephone on October 10, 2024. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by Alisha Young, Overpayment Establishment Analyst.

### **ISSUE**

Did the Department properly determine that Petitioner receive an overpayment (OP) of Food Assistance Program (FAP) benefits in the amount of \$7,301, for the period of December 1, 2022 through October 31, 2023, due to agency error (AE)?

### **FINDINGS OF FACT**

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On [REDACTED] 2022, the Department received an application for FAP from Petitioner for a three-person FAP group. (Exhibit A, pp. 46 – 53).
2. On October 17, 2022, Petitioner reported new employment to the Department and provided an employment acceptance letter. (Exhibit A, p. 3).
3. On October 28, 2022, the Department sent Petitioner a Notice of Case Action (NOCA) that approved Petitioner for FAP benefits of \$672 per month, prorated from October 6, 2022 ongoing. (Exhibit A, pp. 61 – 62).

4. Petitioner received FAP benefits of \$672 per month from October 2022 to March 31, 2023, and \$663 per month from April 1, 2023 to October 31, 2023. Petitioner also received Emergency Allotments (EA) for each month from December 2022 to March 2023. (Exhibit A, pp. 61 – 62, 73 – 75).
5. The Department did not budget Petitioner's earned income when it determined her FAP eligibility and benefit amount. (Exhibit A, p. 3).
6. On September 3, 2024, the Department sent Petitioner a Notice of Overissuance informing Petitioner that her earnings from employment were not included in her FAP budget, and Petitioner received more benefits than she was eligible to receive for the period of December 1, 2022 through October 31, 2023, for a total OP of \$7,301. (Exhibit A, pp. 8 – 13).
7. The Department alleged that based on Petitioner's total monthly household income for each month from December 2022 through October 2023, Petitioner was not eligible for any FAP benefits during those months. (Exhibit A, pp. 19 – 40).
8. On September 10, 2024, the Department received a request for hearing from Petitioner regarding the Department's request to recoup an OP of FAP benefits. (Exhibit A, p. 7).

### **CONCLUSIONS OF LAW**

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. The Department (formerly known as the Department of Human Services) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011.

Petitioner requested a hearing in this matter to dispute the finding by the Department that Petitioner was overpaid FAP benefits that she is required to repay. The Department is seeking to recover a FAP OP for the period of December 1, 2022 through October 31, 2023 in the amount of \$7,301 due to AE. (Exhibit A, pp. 14 – 17).

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OP. BAM 700 (June 2024), p. 1; 7 CFR 273.18(a)(2). The amount of a FAP OP is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 705 (June 2024), p. 6; 7 CFR 273.18(c)(1). An OP can be caused by client error, AE, or an intentional program

violation (IPV). BAM 700, pp. 5 – 9. An AE is caused by incorrect actions by the Department, including not using available information. BAM 700, p. 2; 705, p. 1; 7 CFR 273.18(b)(3).

When an OP, due to AE, in excess of \$250.00 is discovered, the Department is required to establish a claim for repayment for the OP. BAM 700, p. 5; BAM 705, p. 7; 7 CFR 273.18(d)(3). The Department must go back to at least twelve months before it became aware of the OP, but it cannot include amounts that occurred more than six years before it became aware of the OP. BAM 705, pp. 37 CFR 273.18(c)(i); BAM 705, pp. 5 – 6.

In this case, the Department acknowledged that Petitioner reported her income but that it failed to consider and account for Petitioner's employment income in determining her FAP benefit rate. BEM 500 (April 2022), p. 1; BEM 501 (July 2022), pp. 6 – 9. The Department determined Petitioner's FAP group eligibility, and issued benefits, without consideration of Petitioner's reported employment income as required by policy and, as a result, Petitioner received an OP of FAP benefits due to AE. BAM 705, p. 1; BEM 505 (October 2023), pp. 1, 6 – 10.

In support of its calculations of an OP, the Department presented OP budgets for each month of the OP period. The Department testified that it calculated the OP total for these periods by calculating what Petitioner's FAP budget would have been for each month during the OP period, had her actual earned income from Employer been included in the household budget. BEM 505, pp. 13 – 14. (Exhibit A, pp. 19 – 40). To calculate Petitioner's income for purposes of determining the OP, the Department utilized employment income information from the Work Number database. (Exhibit A, p. 44). The Work Number is a tool provided by Equifax Verification Services that the Department uses to verify clients' employment information through wage matches. The Department testified that the only changes it made to Petitioner's FAP budgets when it calculated the OP budget versus the original budget was the inclusion of Petitioner's earned income information. The Department testified that Petitioner had income in excess of the gross income limit for FAP for each month of the OP period.

When determining budgetable income for purposes of determining a FAP OP due to AE, the Department is required to use actual income for that income source and convert it to a standard monthly amount. BAM 705 (June 2024), p. 6; BEM 505 (October 2023), pp. 8 – 9. When a client's income is received bi-weekly, the average of the bi-weekly amounts is multiplied by 2.15. BEM 505, pp. 8 – 9. Any FAP group, without a member over 60 years of age, or disabled, or a disabled veteran (SDV), that has income in excess of the limit for categorical eligibility, as set forth in RFT 250, has income in excess of the FAP gross income limit. BEM 213 (March 2024), pp. 1 – 2. For a FAP group size of three, such as Petitioner's, the income limit for categorical eligibility was \$3,840 until September 30, 2023 and increased to \$4,144 on October 1, 2023. RFT 250 (October 2022 and October 2023).

Based on a review of the OP budgets, it appears the Department calculated Petitioner's earned income on the OP budgets as follows:

- December 2022: based on total actual gross income,
- January and February 2023: based on standardized actual gross income,
- March 2023: based on standardized actual gross income, with one unusual paycheck disregarded,
- April, May, June, July, August, and September 2023: based on standardized actual gross income, and
- October 2023: based on the total of four paychecks, divided by two, and multiplied by 2.15. None of the paychecks were disregarded.

(Exhibit A, pp. 19 – 40, 44). Although the Department did not convert Petitioner's December 2022 income into a standardized monthly amount, when her income is properly converted, she had excess gross income for December 2022. A review of the OP budgets for January 2023 through September 2023 also establish that Petitioner had excess gross income for each of those months. Therefore, Petitioner was not eligible for any FAP benefits from December 1, 2022 through September 30, 2023. However, because the Department was unclear about a) why it did not disregard any unusual paychecks when it calculated Petitioner's earned income on the October 2023 budget, like it had done for March 2023, or b) why it considered four paychecks and converted them based on a bi-weekly pay period when the pay dates did not reflect that they were bi-weekly pays, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it calculated Petitioner's countable earned income for October 2023.

Due to the COVID-19 pandemic, the federal government authorized the State of Michigan to issue Emergency Allotments (EA) to all FAP households, meaning that FAP households not receiving the maximum benefit for their group size would receive a supplement to bring their benefit amount to the maximum for their group size. ESA Memo 2020-15 (March 2020). The State of Michigan issued EA from April 2020 to September 2022. ESA Memo 2022-39 (January 2022). In addition, beginning in May 2021, the Department began issuing a minimum \$95 supplement to all FAP households, including households that were already receiving the maximum allotment for their household size. ESA Memo 2021-22 (May 2021). In this case, COVID-19 EA were approved for December 2022 and January and February 2023. Wrongfully-issued EA are recoupable by the Department if the FAP household is not eligible for any FAP benefits during the month at issue.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department acted in accordance with Department policy when it determined Petitioner received an OP of \$6,951 in FAP benefits and EA from December 1, 2022 through September 30, 2023, but failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined Petitioner received an OP of \$350 for October 2023.

**DECISION AND ORDER**

Accordingly, the Department's decision is **REVERSED with respect to the October 2023 OP**.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Redetermine the amount of Petitioner's countable earned income for October 2023;
2. Redetermine what amount, if any, Petitioner was overissued for FAP benefits in October 2023; and
3. Notify Petitioner of its decision in writing.

CML/nr



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**Caralyce M. Lassner**  
Administrative Law Judge

**NOTICE OF APPEAL:** A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Office of Administrative Hearings and Rules  
Reconsideration/Rehearing Request  
P.O. Box 30639  
Lansing, Michigan 48909-8139

**Via-Electronic Mail :**

**DHHS**

Chelsea McCune  
Macomb County DHHS Warren Dist.  
13041 E 10 Mile  
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**MDHHS-Macomb-20-Hearings@michigan.gov**

**Interested Parties**

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**DHHS Department Rep.**

Overpayment Establishment Section (OES)  
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**Via-First Class Mail :**

**Petitioner**

[REDACTED]  
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[REDACTED], MI [REDACTED]